

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION**

No 6321/05

**B E T W E E N**

**GLENN ALEXANDER THOMPSON  
& CHERYL MAREE THOMPSON**

Plaintiffs

and

**MACEDON RANGES SHIRE COUNCIL**

First Defendant

-and-

**THE COLIBAN REGION WATER AUTHORITY**

Second Defendant

**SECOND FURTHER AFFIDAVIT OF STEVEN MARK EDWARD**

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Date of document: 11 November 2005

Filed on behalf of: the Second Defendant

Prepared by:

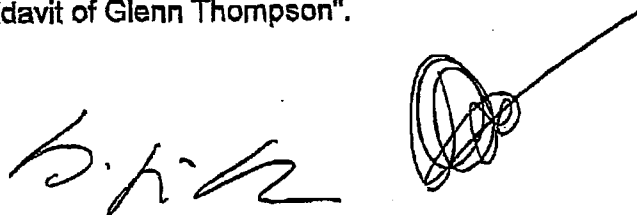
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I, **STEVEN MARK EDWARD**, of 337 Hargreaves Street, Bendigo, in the State of Victoria, Barrister and Solicitor, MAKE OATH AND SAY AS FOLLOWS:

1. I am responsible for the defence of these proceedings on the instructions of the second defendant, and I have, on 12 September 2005 and 3 November 2005, previously sworn affidavits in these proceedings.
2. I have read what purports to be a copy of an affidavit sworn by Glenn Alexander Thompson on 7 November 2005, that affidavit being described as the "Second Affidavit of Glenn Thompson".



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3. In this my affidavit I respond to what is set out in paragraphs 14 and 15 of the Second Affidavit of Glenn Thompson.
4. On 18 December 1998 orders were made in the previous Woodleigh Heights action inter alia requiring the plaintiffs to file and serve a supplementary affidavit of documents by 4 p.m. on 22 January 1999 (a copy of these orders is item 65 in exhibit **SME 2 Volume 3**). Those orders also required the Defendants to carry out inspection of the documents referred to in that affidavit of documents by 5 February 2005.
5. On 22 December 1998 the first named plaintiff swore a Further Affidavit of Documents (a copy of which is item 66 listed in exhibit **SME 2 Volume 3**). On 14 January 1999 I wrote to the plaintiffs' solicitors, Baldock Stacy & Niven, and in that letter I said :

*" We wish to inspect the documents listed in your client's further affidavit of documents sworn 22 December 1998.*

*Please advise where documents can be inspected."*

Now produced and shown to me and marked **SME 8** is a true copy of that letter.

6. On 19 January 1999 I again wrote to Baldock Stacy & Niven and my letter said:

*"You have not replied to our fax letter of 14 January 1999.*

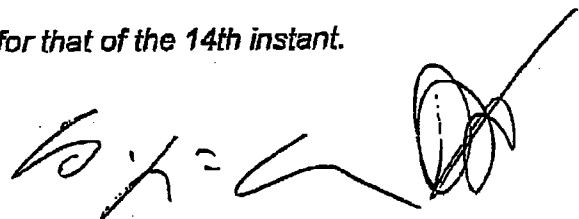
*Please let us know immediately where the discoverable documents referred to in Glenn Thompson's affidavit of documents sworn 22 December 1998 can be inspected.*

*If you do not give us this information within 7 days we will make the necessary application to the Court to force your clients to comply with the requirements of discovery and we will seek costs."*

Now produced and shown to me and marked **SME 9** is a true copy of that letter.

7. On 19 January 1999 I received a letter from Baldock Stacy & Niven, and that letter said:

*"Thank you for your fax today and also for that of the 14th instant.*

A handwritten signature in black ink, appearing to be 'Baldock Stacy & Niven' with a large, stylized flourish at the end.

*The writer has been on leave.*

*The documents may be inspected at this office, by appointment."*

Now produced and shown to me and marked **SME 10** is a true copy of that letter.

8. On 27 January 1999 I sent a letter to Baldock Stacy & Niven, and that letter said:

*"We confirm that we have arranged to attend at your offices on Thursday 4 February 1999 to inspect the documents referred to in item 1 of Part 1 of the First Schedule and all of the items in the Third Schedule to Glenn Thompson's "Further Affidavit of Documents" sworn 22 December 1998.*

*You will recall that Item 1 of Part 1 of the First Schedule of that Affidavit refers to the documents enumerated in the Plaintiffs' Affidavit of Documents dated 1 August 1997, so we will want those documents available for inspection.*

*The writer has made arrangements to stay overnight in Orange on the evening of 4 February in case time is required on 5 February to complete inspection.*

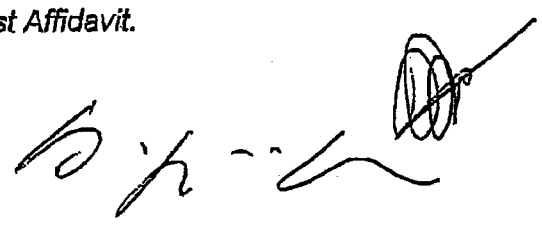
*Please confirm urgently that the documents requested will be available for inspection on those dates."*

Now produced and shown to me and marked **SME 11** is a true copy of that letter.

9. On 28 January 1999 I received a letter from Baldock Stacy & Niven, and that letter said:

*"We refer to your facsimile of the 27th January, 1999, and note that you wish to re-examine the documents set out in the plaintiffs' first Affidavit of Discovery. We note that those documents have been previously made available and that you have examined same.*

*As you are aware, we have not yet had the opportunity to examine the documents set out in your client's Affidavit of Discovery and would be pleased if you could see your way clear to bring them with you when you attend at our offices on the 4th February, 1999 for examination by our client. In the circumstances we would be pleased to again make available the documents set out in our client's first Affidavit.*

A handwritten signature and initials, possibly "Baldock", followed by a circled "X" or similar mark.

*Apart from that, we confirm the availability of the documents set out in our client's further Affidavit and that we will make those documents available to you on the 4th February, 1999.*

*Please advise as to whether or not you are able to bring your client's discovered documents with you."*

Now produced and shown to me and marked **SME 12** is a true copy of that letter.

10. On 29 January 1999 I wrote to Baldock Satcy & Niven as follows:

*"We refer to your letter dated 28 January 1999.*

*We will be more than happy to bring up the documents referred to in our client's Affidavit of Documents for your client's inspection on 4 February 1999.*

*We look forward to meeting you at your office at about 1:30 p.m. on 4 February 1999."*

Now produced and shown to me and marked **SME 13** is a true copy of that letter.



11. On 4 February 1999 I attended at the offices of Baldock Stacy & Niven in Orange to inspect the documents discovered by the plaintiffs. I was taken to an upper floor in the building, and I believe that this was the third floor. I was taken to a room where there were two trestle tables covered with piles of papers. I was given to understand that these were the documents being discovered by the plaintiffs, and which I could inspect. On 4 and 5 February 1999 I carried out an inspection of approximately one quarter to one third of the documents produced, and all of the documents that I inspected were inspected in that room on the upper floor of the Baldock Stacy & Niven building. In total I inspected 12 piles of documents. I counted a total of approximately 29 piles of documents on the tables in that room.

12. During the time that I was inspecting the documents on 4 February 1999, the first named plaintiff brought to the room further documents for me to inspect. He also told me that there were some items not yet on the trestle tables and that he had a list of those further items, however I do not recall the first named plaintiff producing such a list to me. At about 4:30 p.m. on 4 February 1999 I spoke to the

first named plaintiff and said that I would be here until 5 p.m. and then would be back the next day at 9 a.m.. The first named plaintiff said that he had no problems with me returning to finish the inspection later the next week.

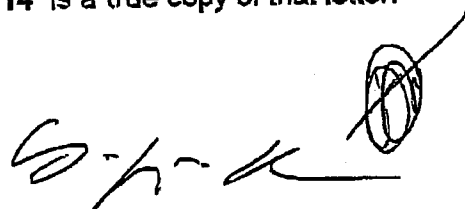
13. On 5 February 1999 while I was continuing inspection of the documents on the third floor of the Baldock Stacy & Niven building, the first known plaintiff asked me for the second defendant's discovered documents so that he could inspect them. I had brought the second defendant's discovered documents with me to Orange and I provided same to the first named plaintiff.
14. When I was about to leave at around midday on 5 February 1999 I again spoke to the first named plaintiff. I told him that he should mark each of the piles of documents that I had looked at as numbered by me, as there could be a need for me to later to identify documents from a particular pile. The first named plaintiff said that he would put what I had looked at in manila folders and number them accordingly. I told him that I would need about two to three further full days to complete inspection of the documents.
15. I did not subsequently make an arrangement with Baldock Stacy & Niven to complete inspection of the plaintiffs' documents, but rather communicated with Baldock Stacy & Niven to arrange to photocopy the plaintiff's documents.
16. On 15 February 1999 I wrote to Baldock Stacy & Niven, and my letter states:

*"We confirm that your clients are not able to have the discoverable documents available for us to photocopy next week as they need access to the documents in relation to the further strike out application that the other Defendants have filed.*

*We also confirm that your clients will not have a problem with us coming and photocopying the documents after 26 February.*

*Obviously if the further strike out application is successful we will not need to copy the documents. If the application is not successful we propose coming to copy the documents from 15 March until probably 17 March 1999. If there is any problem with that please let us know".*

Now produced and shown to me and marked SME 14 is a true copy of that letter.



17. On 10 March 1999 I received a further letter from Baldock Stacy & Niven (and I do not presently have a copy of that letter). On 11 March 1999 I replied to that letter as follows:

*"We acknowledge receipt of your fax dated 10 March 1999.*

*We note that we had previously advised that we would be coming to Orange on and from 15 March 1999 to photocopy your client's further discovered documents.*

*We understand that the Strike Out Application by the other Defendants has in fact been adjourned to 15 March. In the circumstances it does not seem sensible for us to come up to Orange on that day to start photocopying the documents.*

*We propose at this stage to come to Orange on and from 22 March 1999 to photocopy the further documents. Please confirm that that is suitable to you and your clients.*

*If on 15 March 1999 the court upholds the Strike Out Application by the other Defendants then you can expect that we will notify you that we will not be coming to inspect the further documents and that our client would be seeking to strike out the Statement of Claim as well.*

*We note that in the Amended Further Statement of Claim you have just sent by fax there are several references to several of your clients' documents being available for inspection at Neville & Co in Melbourne.*

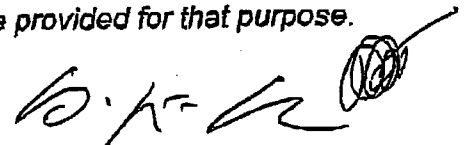
*If in fact all of the further documents (i.e. all of the documents which we started to look at in Orange last month) are going to be available at Neville & Co please let us know as that will make our photocopying task easier."*

Now produced and shown to me and marked SME 15 is a true copy of that letter.

18. On 18 March 1999 I sent a letter by fax to Baldock Stacy & Niven, and that letter said:

*"We confirm that our Steven Edward will be attending at your office for the purpose of photocopying further documents from 9.00 a.m. on Tuesday 23 March 1999. It is anticipated that a period of 3-4 days will be required for that purpose.*

*We also confirm that a photocopier will be installed by Xerox of Orange on Monday 22 March and that a downstairs office at your building will be provided for that purpose.*



*We expect the Judgement to be handed down today or tomorrow. If the Judgement is that the Statement of Claim be struck out then we will notify you immediately cancelling the above arrangements."*

Now produced and shown to me and marked **SME 16** is a true copy of that letter.

19. Shortly after sending that letter by fax, I sent a further letter to Baldock Stacy & Niven as follows:

*"We note that you have confirmed that you will make a room available downstairs in your building so that we can photocopy your client's documents. Xerox, who we have arranged to provide a photocopier, have told us that in fact your client says the documents have to be photocopied on the 4th floor of your building. Xerox are unable to install the photocopier on the 4th floor and can only install it on the ground floor.*

*We require you to confirm by urgent return fax that a suitable room on the ground floor of your building will be available so that Xerox can install their photocopier.*

*If you do not confirm this by 4.00 p.m. today we will have to cancel all arrangements we have made for next week and we will then be filing an Application with the Court to seek orders to enable us to photocopy your client's documents. If we need to file such Application we will produce a copy of this letter on the question of costs."*

Now produced and shown to me and marked **SME 17** is a true copy of that letter.

20. Shortly after sending that letter I received a letter by fax from Baldock Stacy & Niven, and that letter said:

*"Thank you for your facsimile messages of 9 a.m. and 10 a.m. today.*




*This building does not have a 4th floor. It does however have a 3rd floor and it is on this floor that our client has requested that the documents be photocopied.*

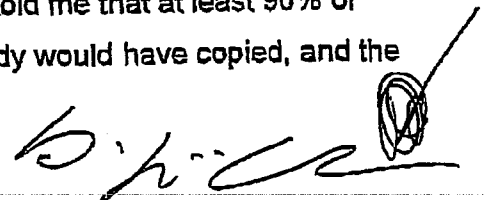
*We do have a suitable room on the ground floor of the building which we are prepared to make available to you however Mr Thompson has pointed out that the documents are in such a state that "autofeed" is not advisable as they may be damaged. Thus there is no necessity for Xerox to provide a "high end photocopier" but rather a more transportable device could be used as the documents will need to be handled.*

*It appears to the writer that the present impasse is related entirely to the type of machine upon which you propose to carry out your photocopying not to our reluctance to allow the documents to be photocopied and therefore believe that your proposed application to the court would be an unnecessary expense.*

*Perhaps if the writer could speak to Xerox direct about the matter a compromise could be reached."*

Now produced and shown to me and marked **SME 18** is a true copy of that letter.

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21. On 22 March 1999 I drove from Bendigo to Orange for the purpose of photocopying the plaintiffs' discovered documents. I went to the offices of Baldock Stacy & Niven at about 9 a.m. on 23 March 1999. I was present when a photocopying machine, which I had arranged to be hired, was carried to the room on the upper floor in the Baldock Stacy & Niven building where the plaintiffs' documents were located. This was the same floor and room where I had carried out a partial inspection of the plaintiffs' documents 4 and 5 February 1999. There were, again, numerous piles of documents on trestle tables in that room. After the photocopying machine was installed I commenced photocopying documents that were on the tables in that room.
22. I was engaged in photocopying documents from 9 a.m. to 1:30 p.m. and again from 2:10 p.m. to 5 p.m. on 23 March 1999. I was then engaged in photocopying the documents from the tables in that room on 24 March 1999 from 9 a.m. to 1 p.m. and 1:45 p.m. to 4:40 p.m., on 25 March 1999 from 9:15 a.m. to 12:30 p.m., 1 p.m. to 5 p.m. and 6 p.m. to 8:30 p.m., and then on 26 March 1999 from 9:10 a.m. to 1 p.m.. I did not photocopy any documents other than as produced to me in that room. The total number of pages photocopied was approximately 6500. I did not photocopy a bundle of old cheque stubs (about eight of them) and about four folders of bank statements. I agreed with the first named plaintiff that I would write confirming that he should go through those cheque stubs and bank statements and copy for me any cheque stubs or bank statements that were relevant to the proceedings.
23. The first named plaintiff also told me that he had a further pile of a few thousand documents that he had not gone through yet. He told me that at least 90% of those documents would be documents that I already would have copied, and the





first named plaintiff and I agreed that I would make a written request to confirm that if he found any more documents that he has not yet produced, then he would send copies to me. Accordingly, on 8 April 1999 I wrote to Baldock Stacy & Niven and now produced and shown to me and marked **SME 19** is a true copy of that letter, which states

*"We refer to our recent visit to your office to photocopy your client's produced documentation.*

*We confirm that we did not copy anything from a bundle of old cheque stubs and bank statements that your clients had available. From the inspection of them it appears that many of the cheque stubs relate to your clients' personal matters and have nothing to do with issues that have been raised in these proceedings. From our discussion with Glenn Thompson it appears that there are some items within the bank statements and cheque stubs that do relate to issues in these proceedings e.g. proof of payment of mortgage instalments and the like.*

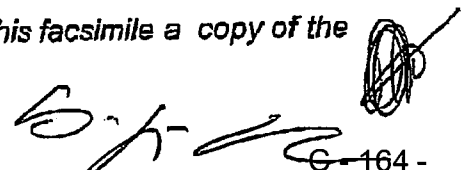
*We confirm our request to your client that you arrange to copy from the cheque stubs and bank statements any items that relate to your client's obligation for discovery in these proceedings, including what has to be disclosed pursuant to the Orders made last year.*

*We will of course pay your reasonable photocopying costs for that.*

*We also confirm that your client advised that he had a further pile of a large number of documents that he had not fully gone through by the time that the writer was leaving Orange. We confirm that your client believes that at least 90% of the documentation that he still has and had not gone through would have been originals of or copies of material that your client had produced and which we had copied. "*

24. On 25 March 1999 at 2:54 p.m. (while I at their office engaged in photocopying the plaintiffs' documents) Baldock Stacy & Niven sent a letter by fax to Beck Sheahan Quinn & Kirkham, solicitors (who were at that time the solicitors for the second defendant in the previous Woodleigh Heights action, and my then employer). That letter said, in part,

*"As you are aware Mr Edward is presently at our offices taking copies of the numerous discovered documents. He has asked us to include with this facsimile a copy of the*



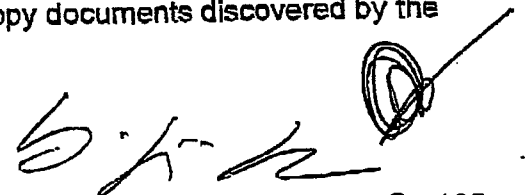
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*written Judgement handed down this day. Accordingly please find attached copy of the said Judgement. We also advise that we shall hand a copy of this letter, the written Judgement and the amended further statement of claim dated 17 March 1999, to Mr Edward."*

Now produced and shown to me and marked **SME 20** is a true copy of that letter.

25. Insofar as the first named plaintiff in the Second Affidavit of Glenn Thompson says that I did not attend at his solicitors but at his "domestic premises" I say that in February and March 1999 I attended at the offices of Baldock Stacy & Niven, as referred to above. I believe that the address of Baldock Stacy & Niven is 68 Summer Street, Orange. In the affidavit sworn by the first named plaintiff on 18 February 1998 (item 20 in exhibit **SME 2 Volume 1**) the first named plaintiff gives his address as "formerly of 98 Hill Street, Orange, now of 345 Lords Place, Orange". In the affidavits sworn by the first named plaintiff on 14 December 1998 and 22 December 1998 (items 62 and 66 respectively in exhibit **SME 2 Volume 3**) the first named plaintiff gives his address as 98 Hill Street, Orange. In the affidavit sworn by the first named plaintiff on 22 February 1999 (item 69 in exhibit **SME 2 Volume 3**) the first named plaintiff gives his address as "formerly of 98 Hill Street, Orange, but now of 345 Lords Place, Orange". In the affidavit sworn by the first named plaintiff on 12 March 1999 (item 70 in exhibit **SME 2 Volume 3**) the first named plaintiff gives his address as formerly of 98 Hill Street, Orange but now of 345 Lords Place, Orange. In the affidavit sworn by the first named plaintiff on 31 August 1999 (item 94 in exhibit **SME 2 Volume 4**) the first named plaintiff gives his address as 345 Lords Place, Orange. I have not been to 98 Hill Street, Orange or to 345 Lords Place, Orange.

26. In paragraph 15 (b) of the Second Affidavit of Glenn Thompson (and I note that that affidavit was prepared by Baldock, Stacy & Niven) the first named plaintiff states that: "*In circumstances which I cannot now recall Mr Edward obtained my permission to attend at my home to view and copy any documents which he found to be relevant to the 1995 Supreme Court proceedings.*" As set out earlier in this my affidavit, the arrangements for me to attend at the offices of Baldock Stacy and Niven in February 1999 to inspect documents discovered by the plaintiffs, and again in March 1999 to photocopy documents discovered by the



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plaintiffs were made between me and Baldock Stacy & Niven who were then (as now) acting for the plaintiffs.

27. In the affidavit sworn by the first named plaintiff on 22 February 1999 (item 69 in exhibit **SME 2 Volume 3** ) the first named plaintiff refers to correspondence between Baldock Stacy & Niven and Phillips Fox, solicitors, (who were then acting for the first named defendant in the previous Woodleigh Heights action). That correspondence is referred to as exhibit "GT1" to that affidavit. Now produced and shown to me and marked **SME 21** is a true copy of that exhibit GT1. Two of the items in that exhibit are letters by Baldock Stacy & Niven to Phillips Fox, dated 12 and 27 January 1999, and those letters advise that the documents referred to in the plaintiffs' Further Affidavit of Documents were available for inspection "at the offices of Baldock Stacy & Niven, 68 Summer Street, Orange."

SWORN by  
**STEVEN MARK EDWARD**  
at Bendigo in the State of Victoria  
on ~~3~~ November 2005.

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Before me

x

This affidavit is filed on behalf of the Second Defendant.

**DEBRA ANN LAYN**  
A current practitioner  
within the meaning of  
the Legal Practice Act 1996  
337 Hargreaves St. Bendigo